

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

MARVIN HARRIS,
Plaintiff,
v.
BYAN D. PHILLIPS, et al.,
Defendants.

) Case No.: 1: 23-cv-1051 JLT SAB (PC)
)
) ORDER ADOPTING THE FINDINGS AND
) RECOMMENDATIONS DENYING PLAINTIFF'S
) MOTION TO PROCEED IN FORMA PAUPERIS
) AND DIRECTING PLAINTIFF TO PAY THE
) FILING FEE IN FULL WITHIN 30 DAYS
)
) (Docs. 2, 12)
)
)

Marvin Harris moved to proceed *in forma paupers* when he initiated this action, in which he seeks to hold the defendants liable for violations of his civil rights. (Doc. 2.) The magistrate judge found Plaintiff is subject to the three-strikes provision of 28 U.S.C. § 1915(g), because he had more than three cases dismissed as frivolous or for failure to state a claim prior to filing the complaint in this action. (Doc. 12 at 2.) In addition, the magistrate judge found Plaintiff did not satisfy the imminent danger exception, because “Plaintiff makes no allegation of imminent danger of serious physical injury at the time he filed his complaint.” (*Id.* at 3.) Therefore, the magistrate judge found Plaintiff was not entitled to proceed *in forma pauperis* in this action, and recommended his motion be denied. (*Id.*)

Plaintiff filed objections to the Findings and Recommendations with a Notice of Appeal, which included the Findings and Recommendations as an attachment. (*See* Doc. 14; *see also id.* at 6-8.) The Ninth Circuit dismissed Plaintiff’s appeal, and indicated its order of dismissal constituted its mandate, on March 28, 2024. (Doc. 18 at 1.) Importantly, a review of the Objections/ Notice of Appeal

1 establishes that Plaintiff does not dispute the determination that he is subject to the three-strike rule of
2 28 U.S.C. § 1915(g) or show that he was imminent danger of serious physical injury.

3 According to 28 U.S.C. § 636(b)(1)(C), this Court performed a *de novo* review of this case.
4 Having carefully reviewed the matter, the Court concludes the Findings and Recommendations are
5 supported by the record and proper analysis. Thus, the Court **ORDERS**:

- 6 1. The Findings and Recommendations issued July 17, 2023 (Doc. 12) are **ADOPTED**.
- 7 2. Plaintiff's motion to proceed *in forma pauperis* (Doc. 2) is **DENIED**.
- 8 3. Plaintiff **SHALL** pay the \$405 filing fee in full for this action within 30 days of the date
9 of service of this order.

10 **Plaintiff's is advised failure to comply with this order will result in dismissal of this action.**

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12 IT IS SO ORDERED.

13 Dated: June 5, 2024


UNITED STATES DISTRICT JUDGE

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